

ARIZONA RACING COMMISSION

607TH REGULAR MEETING

WEDNESDAY, SEPTEMBER 14, 2011

MINUTES OF REGULAR MEETING

A public meeting of the Arizona Racing Commission was convened on Wednesday, September 14, 2011, beginning at 10:00 a.m. in the Building Conference Room, Suite 250, at 1110 West Washington Street, Phoenix, Arizona 85007.

Present – Chair Erin Owens
Commissioner Thomas E. Kelly
Commissioner Burton S. Kruglick
Commissioner Jay McClintock
Absent – Vice-Chair A. Melvin McDonald

Also Present: Lonny T. Powell, Director, Mary D. Williams, Assistant Attorney General, and Christopher Munns, Assistant Attorney General

A. Call to Order

Chair Owens called the 607th Regular Meeting of the Arizona Racing Commission to order at 10:00 a.m. The following matters were discussed, considered and decided at the meeting:

Approval of the Minutes:

Minutes of the 606th Regular Meeting held on Wednesday, June 8, 2011 – **Commissioner Kelly** moved to approve the minutes. **Commissioner McClintock** seconded. **All in favor.**

B. New Business

- 1. Appeal of Director's Order, Appellant Clyde W. Brashears, Case No. 10A-061-DOR – Chair Owens** reviewed the hearing format with those present and recognized Attorney Saba Bazzazieh, counsel for appellant, Clyde Brashears. **Attorney Bazzazieh** stated that the appeal was based on the appellant's belief that the Director improperly admitted and relied upon evidence that is unreliable in upholding the Stewards' Ruling; namely, the affidavits issued by Industrial Laboratories and Iowa State University that indicated the LC/MS testing method was used. Attorney Bazzazieh claimed this was a violation of Arizona statute and state and federal rules of evidence and a violation of the appellant's due process rights. She asked that the Order be modified to eliminate the suspension of Mr. Brashears' license. **Assistant Attorney General Williams** responded, stating that the appellant failed to demonstrate in the hearing before the Director that the laboratories' affidavits invalidate or in any way affect the results of the test. The testing terminology is a broad term that can encompass more specific techniques or instruments used to test. The Director's ruling is consistent with prior similar rulings. AAG Williams requested the Commission to dismiss the appellant's appeal and affirm the Director's Order with the exception that the portion of the Order indicating willful violation of statute be removed. There is no evidence in the record that the appellant willfully violated the statutes. **Mr. Brashears** addressed the Commission, providing a brief history of his involvement in racing, and expressed his concerns over the change in testing procedures. He asked that evidence be presented that was not allowed at the Director's hearing. **Assistant Attorney General Munns** informed the Commission that this could not be considered unless they wished to re-hear the case. **Chair Owens** and **Commissioners Kelly and McClintock** received comments from Attorney Bazzazieh and Assistant Attorneys General Williams and Munns and agreed to move forward. **Chair Owens** explained the Commissions motion options. **Commissioner McClintock** moved to uphold the Director's Order. **Assistant Attorney General Munns** reminded the Commission of the modification that deleted the "willful violation" charge. **Commissioner McClintock** amended his motion. **Commissioner Kelly** seconded the motion. **Commissioner Kruglick** offered an alternate motion. He moved to reduce the suspension from 15 days to 7 days and the penalty from \$525 to \$250. **Chair Owens** called for a second. There was no second. The motion failed. **Chair Owens** called for a vote on Commissioner McClintock's motion. **All in favor. The Director's Order is affirmed as modified.**
- 2. Request for approval of race dates for Tucson Greyhound Park, Inc. and consideration of approval of a temporary permit pending completion of the permit application review – Director Powel** asked Assistant Director Cozby to address this item. **Assistant Director Cozby** informed the Commission that the Department was in the process of reviewing the permit renewal application, but because the review process can take several months, the Department was recommending that a temporary permit be approved as allowed in statute, and that the dates submitted for 2011, 2012 and 2013 be approved.

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After some discussion, **Chair Owens** called for a motion. **Commissioner McClintock** moved to approve the temporary permit and the dates as set forth in the Commission packet. **Commissioner Kelly** seconded the motion. **All in favor.**

3. **Application for renewal of the Cochise County Fair Association county fair racing permit, Douglas, Arizona, for FYs 2012, 2013 and 2014** – **Director Powell** noted that the Cochise application submitted dates as a placeholder until funding for the fairs was available. The Department supports the fairs and recommends approval of the application. **Chair Owens** moved for approval. **Commissioner McClintock** seconded the motion. **All in favor.**
4. **Amendment to the Turf Paradise 2011-2012 live racing schedule** – **Director Powell** asked Assistant Director Cozby to address this item. **Assistant Director Cozby** informed the Commission that Turf Paradise was changing some of their dark days to live days. The Department recommends approval of the changes as set forth in the Commission packet. **Chair Owens** noted that the total number of live days remains the same and called for a motion. **Commissioner Kelly** moved for approval. **Commissioner McClintock** seconded the motion. **All in Favor.**
5. **Turf Paradise applications for additional wagering facilities:**
 - a. **Stinger's Sports Bar, 10040 N. 43rd Avenue, Suite #1-H, Glendale, AZ**
 - b. **Tiny's Family Restaurant, 600 E. Hwy 260, Payson, AZ**

Director Powell asked Chief Steward/Supervisor of Officials/Wagering Walsh to address this item. **Mr. Walsh** reported that he had visited both sites and the applications were in order. The Department recommends approval of both sites. **Chair Owens** and **Commissioner Kruglick** questioned Mr. Walsh regarding OTBs. **Chair Owens** called for a motion for Stinger's Sports Bar. **Commissioner Kruglick** moved for approval. **Commissioner Kelly** seconded the motion. **All in favor.** **Chair Owens** called for a motion for Tiny's Family Restaurant. **Commissioner Kelly** moved for approval. **Chair Owens** seconded the motion. **All in favor.**
6. **Recommended Meeting Dates/Locations for 2012 Arizona Racing Commission Meetings** – **Director Powell** reviewed the 2012 dates which include no meetings in July, August and December. **Chair Owens** called for a motion. **Commissioner McClintock** moved to approve. **Chair Owens** seconded the motion. **All in favor.**

C. Information Reports

1 Department Monthly Update

- a. **Department Update on Yavapai Downs** – **Director Powell** reported that the Department had been contacted by the bankruptcy trustee and advised that no action should be taken on the Yavapai permit application. The Department is seeking advice from the Attorney General's office.
- b. **Official and Personnel Updates/Introductions** – **Director Powell** noted that the Department had been able to fill several vacant positions recently. Those individuals present were introduced to the Commission.
- c. **Introduction and Remarks** – **Dr. Scot Waterman, DVM, ADOR Animal Medical & Welfare Advisor** – **Dr. Waterman** introduced himself to the Commission and shared his background in racing as well as veterinary medicine and animal medication and welfare.
- d. **Department Budgeting Update for current fiscal year and FY 2013** – **Director Powell** gave the Commission a brief overview of the budget and explained that funding from the new Racing Regulation Fund became effective July 20, 2011.
- e. **Turf Paradise**
 1. **Early stable area opening and associated regulatory and security initiatives** – **Director Powell** updated the Commission on pre-meet activities at Turf, including the early start of licensing at Turf due to the early stable area opening and the stepped-up licensing schedule. He also discussed the Department's efforts at maintaining a secure enclosure prior to opening day.
 2. **Pre-live meet opening preparations** – **Director Powell** stated that efforts were ongoing.

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2. **Permittee Reports – Assistant Attorney General Williams** advised the Commission and those in attendance that permittees were to give updates only. There was to be no substantive discussion or questions. If the Commission wanted additional information, they were to direct staff to bring the matter back on a future agenda. **Director Powell** noted that the HBPA had asked for additional time to present some issues of concern. They would present their report during the Stakeholder portion of the meeting.
 - a. **Turf Paradise – Vince Francia, General Manager**, updated the Commission on the number of horses on site as well as the number of trainers allotted stalls. He also noted that there would be an increase in purses and stakes races.
 - b. **Tucson Greyhound Park – Tom Taylor, General Manager**, reported that Tucson Greyhound Park had to cancel 8 of the 14 race dates due to rain. He also reported that TGP was going “green.” They have installed solar panels in the infield and will be selling power to Tucson Electric. The panels do not disturb the greyhounds or the view/video of the races.
 - c. **Rillito – Patti Shirley, Vice President**, reported that their facility had been broken into twice; copper wire was taken. A security guard has been hired. They have purchased a starting gate from Lee Peterson and will make it available to any of the county fairs. Because of these unexpected expenses, they will postpone building the stewards’ stand until next year.
 - d. **County Fairs – No report**
 - e. **American Greyhound Racing – Dan Luciano, General Manager**, reported that business had held steady during the summer. He also reported the Arizona Pizza OTB has closed.

2. Optional Industry Stakeholder Association

- a. **Arizona Greyhound Association – No Report**
- b. **Arizona Quarter Racing Association – Ralph Fales** said his members were looking forward to the start of racing. He also said he would be talking to Dr. Waterman regarding a recent California medication ruling.
- c. **Arizona Thoroughbred Breeders Association – Yvonne Kunz, Executive Director**, reported that they were getting ready for the October sale. Breeders’ numbers were down, but quality was up.
- d. **Horsemen’s Benevolent & Protective Association – President Gary Miller** reported on several issues of concern. When he was finished, **Chair Owens** said she felt some issues should be brought back to the Commission for discussion. These items will be scheduled for the October 12, 2011 Commission meeting.
- e. **Jockey’s Guild – No report**

D. Commission Reports – No report

The next regular Commission meeting will be held **Wednesday, October 12, 2011, at 10:00 a.m.** in Building Conference Room Suite 250, at 1110 West Washington Street, Phoenix, Arizona 85007.

E. Call to the Public

Steve Nolan shared his concerns about the industry and submitted documents to **Director Powell** regarding TP Racing litigation.

Buzz Alston, attorney for Turf Paradise, commented on Mr. Miller’s presentation

Adjournment

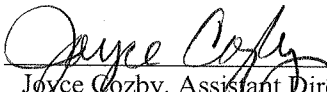
Chair Owens called for a motion to adjourn. **Commissioner Kruglick** moved to adjourn the meeting.

Commissioner Kelly seconded the motion. **All in Favor**

This public meeting adjourned at 11:58 a.m.

Dated this 23rd day of September, 2011

Arizona Racing Commission

By 
Joyce Cozby, Assistant Director
Policy & Administration